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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.862 OF 1988

Baban Shekha Bidgar)
age about 38 years, residing at)
Nhavare, Taluka: Shirur, Dist.)
Pune.) ... Appellant
(Orig. Accused 1)

Versus

1. The State of Maharashtra,)
(Notice to be served on)
Public Prosecutor, High)
Court, Bombay.)) ... Respondent 1

2. Parvatrao Ramchandra Nimbalkar)
Adult, Occ. Agriculturist)
Residing at Nhavare, Taluka)
Shirur, District : Pune.) ... Respondent 2
(Orig. Complainant)

WITH

CRIMINAL APPEAL NO. 1073 1988

State of Maharashtra) ... Appellant

Versus

1. Baban Shekha Bidgar,)
2. Mhala Shekha Bidgar,)
3. Sala Shekha Bidgar,)
4. Shekha Mukta Bidgar,)
5. Barku Malhari Bidgar,)
6. Jaising Malhari Bidgar,)
Occupation Nil,)
All residing at Nhavare,)
Taluka Shirur, Dist. Pune.) ... Respondents

WITH

CRIMINAL REVISION APPLICATION NO.455 OF 1988

Parvatrao Ramchandra Nimbalkar) ... Applicant

Versus

1. Baban Shekha Bidgar,)
2. Mhala Shekha Bidgar,)
3. Sala Shekha Bidgar,)
4. Shekha Mukta Bidgar,)
5. Barku Malhari Bidgar,)
6. Jaising Malhari Bidgar,)
Occupation Nil,)

All residing at Nhavare,)
Taluka Shirur, Dist. Pune.)

7. State of Maharashtra) ... Respondents

Mr. Navin B. Shah for appellant-accused 1.

Mr. Jitendra Patil for respondent-Complainant.

Mr. D.S. Mhaispurkar, A.P.P. for the State.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 5TH OCTOBER, 2004.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The present appeals and revision application involve same facts and identical contentions and, hence, it is advantageous to dispose them of by a common judgment and,

hence, this common judgment.

2. The appellant (for convenience, "accused 1") along with five others (for convenience, "accused 2 to 6 respectively") was tried in Sessions Case No.291 of 1987 in the Court of the Additional Sessions Judge, Pune at Pune for the offences punishable under sections 147, 148, 326, 307 and 120-B of the Indian Penal Code (for short, "the IPC") on the allegation that in furtherance of their common intention they conspired and caused serious injuries to the victim Parvatrao Ramchandra Nimbalkar,

resident of Nhavare, Tal. Shirur, Dist. Pune,

3. The prosecution case is as follows. The accused are

residents of Village Nhavare. Accused 1 to 3 are sons of accused 4 Shekha Bidgar. They belong to farmer community. Accused 5 and 6 are brothers. Accused 6 is the police patil of village Nhavare.

4. The complainant is also a resident of the same village. He is also an agriculturist and he belongs to Maratha community. Admittedly, there was a long standing dispute between the complainant and the accused on account of a well situated in Survey No.1587. It appears that civil suits are pending between the two sides in Civil Court at Shirur. Similarly, chapter cases are also pending against both sides.

5. On 24/3/1987 at about 11.30 a.m., the complainant Parvatrao Nimbalkar had gone to the Civil Court Shirur. He tried to find out his counsel. His counsel was not available. As he was going towards the northern gate of the court compound in search of his counsel, accused 1 to 5 came from behind. They were having cloth bags in their hands. They bounced over the complainant. They fell him down. All the accused were armed with axes and sickles. They assaulted the complainant with the help of the said weapons. Accused 1 Baban gave axe blows on both the legs of the complainant and also on his head. Rest of the accused caused injuries to the complainant on his hand. The complainant's injuries were bleeding profusely. His left leg was amputated. The people standing in the court premises came running towards him. Some of the witnesses

hurled stones at the accused. The accused ran away. The complainant was then taken to the municipal dispensary, Shirur. He was admitted there. The Mamlatdar also arrived there. The complainant was, however, conscious and well oriented. He was in a position to make the statement. Hence, his statement (Ex-62) came to be recorded, in which he gave the names of accused 1 to 4 as his assailants. He was then sent to Sassoon Hospital, Pune. He was in Sassoon Hospital, Pune, for several days. His left leg was required to be amputated.

6. On the basis of the statement of the complainant (Ex-62), the investigation was started. The accused came to be arrested. After completion of the investigation, the accused came to be charged as aforesaid.

7. At the trial, the prosecution examined as many as 11 witnesses. The prosecution case basically rests on the evidence of PW-1 Parvatrao Nimbalkar, PW-2 Shripad Kulkarni, the stamp vendor and PW-4 Shankar Padval, the court nazir, who claim to be the eye-witnesses. Dr. Machindra Sonalkar, the medical officer at Shirur municipal dispensary had given the first aid to the complainant. He has given details of injuries suffered by the complainant. The details of the investigation are given by PW-10 Sr.PSI, Pirmohamad Japharbai.

8. The defence of the accused was one of denial. According to the accused, they have been implicated in

this case on account of enmity. According to them, the complainant had criminal antecedents. He was involved in a murder case. He tries to harass the weaker section and, hence, most of the people in the village are holding grudge against him and, hence, he might have been attacked by one of them. At some stage, the accused took the plea of alibi. However, the said plea seems to have been abandoned as in the statement under section 313 of the Code of Criminal Procedure, (for short, "the Code"), the accused did not speak anything about it.

9. After perusing the evidence adduced by the prosecution, the learned Sessions Judge acquitted accused 2 to 6 of all the charges. He, however, convicted accused 1 under section 326 of the IPC and sentenced him to suffer rigorous imprisonment for five years and also to pay a fine of Rs.11,000/-, in default to suffer further rigorous imprisonment for two years. The learned Sessions Judge directed that in the event of payment of fine, a sum of Rs.10,000/- be paid to the complainant Parvatrao Nimbalkar as compensation.

10. Being aggrieved by this judgment and order, accused 1 has preferred Criminal Appeal No.862 of 1988 in this court. Criminal Appeal No.1073 of 1988 is preferred by the State of Maharashtra under section 378 (1) of the Code being aggrieved by the impugned judgment and order to the extent to which it acquits all the accused of the charges levelled against them. Criminal Revision

Application No.455 of 1988 is preferred by the complainant Parvatrao Nimbalkar praying that accused 1 to 6 be convicted under sections 147, 148, 326, 307 and 120-B of the IPC and sentence passed against accused 1 be enhanced and he be awarded maximum jail sentence as prescribed under the IPC.

11. We have heard, at some length, Mr. Shah, the learned counsel appearing for accused 1. With his assistance, we have gone through the entire evidence. Mr. Shah contended that in view of the admitted enmity between the two sides, the evidence adduced by the prosecution will have to be read with caution for the possibility of false implication cannot be ruled out. He submitted that the investigation has not been conducted in an impartial manner. The prosecution has suppressed the genesis of the case. Drawing our attention to Ex-62, which is the statement of PW-1 Parvatrao Nimbalkar, the learned counsel contended that whereas in his police statement, PW-1 Parvatrao Nimbalkar has involved only four accused, in his evidence in the court, he has sought to involve accused 5 also. Accused 6 has also been unnecessarily involved. The learned counsel contended that this reflects on the credibility of the prosecution story. He further submitted that so far as the other two eye-witnesses are concerned namely, PW-2 Shripad Kulkarni, who is the stamp vendor and PW-4 Shankar Padval, the court nazir, they have stated that they saw only accused 1 assaulting the complainant. Assuming that

they are, in fact, the eye-witnesses and they have seen the incident from close quarters, they would not have missed the other accused. They would have named the other accused also. Their claim that they saw only accused 1 is doubtful. The fact that they have not referred to the other accused also makes the complainant's story suspicious because the complainant has referred to four persons. Mr. Shah further contended that so far as PW-2 Shripad Kulkarni, the stamp vendor is concerned, it is doubtful whether he was, in fact, present at the scene of offence because the incident is said to have taken place between 11.00 a.m. to 11.30 a.m. and in his police statement, PW-2 Shripad Kulkarni has stated that he came to the court at 12.00 a.m. In court he has stated that he came to the court at 11.45 a.m. This contradiction suggests that this witness was not in court at the time of the incident. So far as PW-4 Shankar Padval is concerned, according to Mr. Shah, his evidence also cannot be readily accepted because he had colluded with the complainant to get Suit No.118 of 1985, which was filed by the accused, withdrawn by false means. Mr. Shah pointed out that this case is put up in the cross-examination of this witness. It would be, therefore, risky to rely on the evidence of this witness. Mr. Shah also pointed out that PW-2 Shripad Kulkarni has admitted in his evidence that he knew accused 2 to 6 also. Therefore, it is inconceivable that if he had witnessed accused 1 giving blows with axe on the complainant, he would not have seen the other accused.

The story that their back was turned towards him is inherently improbable and casts a shadow of doubt on the entire prosecution case. Mr. Shah further contended that the prosecution case that there was a conspiracy, has been rightly discarded by the learned Sessions Judge. The learned Sessions Judge has rejected the evidence of PW-6 Tatyaba Shendge. Similarly, the learned Sessions Judge has disbelieved the entire evidence of discovery of weapons at the instance of the accused. Therefore, substratum of the prosecution story has disappeared. It is, therefore, difficult to hold that the prosecution story, only so far as it relates to the assault by accused 1 is acceptable. In such a situation, the benefit must go to the accused. The learned counsel submitted that, in the circumstances, the order of conviction and sentence be set aside and accused 1 be acquitted.

12. Mr. Jitendra Patil, the learned counsel appearing for the petitioner-complainant in Criminal Revision Application No.455 of 1988, contended that the learned Sessions Judge was wrong in acquitting the other accused. He submitted that the medical evidence clearly shows that there were several injuries on the complainant. In the nature of things, therefore, this is not a work of one man and participation of all the other accused must be inferred. He submitted that the learned Sessions Judge ought to have believed the evidence of PW-1 Parvatrao Nimbalkar, who is an injured witness and should have

convicted all the accused. He further submitted that so far as accused 1 is concerned, looking to the nature of the injuries and evidence of the doctor that the said injuries could have resulted in the death of the complainant, the learned Sessions Judge ought to have convicted accused 1 under section 307 of the IPC and not under section 326 of the IPC and, therefore, the sentence awarded to him be enhanced.

13. We have also heard Mr. D.S. Mhaispurkar, the learned A.P.P. appearing for the State in support of Criminal Appeal No.1073 of 1998 filed by the State. He contended that the order of acquittal of other accused i.e. accused 2 to 6 deserves to be set aside. He submitted that there was no reason for PW-1 Parvatrao Nimbalkar to falsely implicate the other accused. His evidence is consistent and, therefore, the order of acquittal of the other accused be set aside, and looking to the nature of the injuries sustained by PW-1 Parvatrao Nimbalkar and the manner of commission of the crime all the accused be convicted in accordance with law.

14. We have given our anxious consideration to the submissions advanced by both sides. It is an admitted position that the relationship between the accused and the complainant was strained. The dispute pertains to the right and title to a well. In respect of this, civil litigation is pending in Civil Court, Shirur. Chapter cases were also pending against both sides. We shall

view the entire evidence against the background of the admitted strained relationship between the two sides.

15. PW-1 Parvatrao Nimbalkar has in his evidence given the nature of the incident. He has stated that on 24/3/1987, he went to Shirur Civil Court to attend a civil case. At about 11.30 a.m., he was searching for his counsel Mr. Deo. He saw accused 1 to 5 coming from behind the house wherein the court clerk and the peon reside. They were having cloth bags in their hands. Accused 1 took out an axe from his cloth bag. Accused 4 also took out an axe from his bag. Accused 2, 3 and 5 also took out sickles from their respective bags. They fell the complainant down on the ground. Accused 1 with the help of axe gave blows on both his legs. He also gave blows on his head. Rest of the accused beat him by sickles and axes. He received injuries on his hands. His left leg had to be amputated. He raised cries. People came running towards him. The accused then ran away. He was then shifted to the municipal dispensary, Shirur and his statement, Ex-62, came to be recorded.

16. It is true that in Ex-62, PW-1 Parvatrao Nimbalkar has involved only accused 1 to 4 but in the court he has referred to accused 5 as being his assailant. The question is whether PW-1 Parvatrao Nimbalkar's story that all the accused assaulted him can be accepted. In this connection, it is also necessary to see the evidence of another eye-witness i.e. PW-2 Shripad Kulkarni, who is

the stamp vendor. PW-2 Shripad Kulkarni has stated that on 24/3/1987, at about 11.30 a.m. or 11.45 a.m., he came to the court campus. He heard a commotion on the northern side of the court premises. He saw five to six persons beating one person by axes and sickles. That person was the complainant PW-1 Parvatrao Nimbalkar. Accused 1 was one of the assailants. He gave axe blows on the legs of the complainant. The complainant raised cries. Therefore, many litigants including the court nazir rushed to the spot. The assailants ran away. PW-2 Shripad Kulkarni has further stated that thereafter, he helped shift the complainant to the municipal dispensary, Shirur. The police recorded his statement on the same day.

17. PW-4 Shankar Padval, is the court nazir. He also claims that he had seen the incident. He has stated that on 24/3/1987 as usual he attended his duties in the court at about 11.00 a.m. He was sitting in his chair in the court building. At about 11.45 a.m., he heard a commotion from outside. He came out of his room. On the northern side near the small gate, he saw an incident of maramari going on. He went ahead. He saw five persons were assaulting a man with weapons. Out of the five assailants, he could only recognise accused 1. He could not identify the other assailants as he could not see their faces. Accused 1 was beating the complainant with the help of axe, on his legs.

18. In our opinion, the evidence of PW-2 Shripad Kulkarni and PW-4 Shankar Padval inspires confidence. PW-2 Shripad Kulkarni is the stamp vendor. He knows both the complainant and the accused. If he really wanted to take the side of the complainant, he could have falsely implicated all the accused. The fact that he names only one person speaks for the credibility of this witness. We find no substance in the criticism levelled against this witness about a minor contradiction which has been brought on record in his evidence as regards the time when he came to the court. Whereas, in his police statement, he had stated that he came to the court at 12.45 a.m., he has stated in his evidence in the court that he was in the court at about 11.45 a.m. He has explained it by saying that the police had recorded the time wrongly. In our opinion, this is a minor discrepancy which does not discredit his testimony. We find that his evidence is a ring of truth. We accept him as a truthful witness.

19. Similarly, PW-4 Shankar Padval also appears to be a truthful witness. It is true that a suggestion is put to him that he colluded with the complainant to get Suit No.118 of 1985 withdrawn by false means. But, barring this suggestion, there is no material produced on record to indicate that, in fact, he had colluded with the complainant. His evidence cannot be discarded merely on this ground, which is unsubstantiated. We feel that if both these witnesses really wanted to support the

complainant, they would have implicated the other accused also but, they only say that they saw only accused 1 assaulting the complainant. The evidence of these two witnesses, in our opinion, corroborates the complainant's case that he was assaulted by accused 1 on his legs.

20. We are mindful of the fact that the complainant has in his complaint involved only four persons whereas in the court he has involved one more person. But on that ground, we are not inclined to disbelieve him completely. No doubt, he has exaggerated the case but such exaggeration does not make him an unreliable witness. It is a fact that he has received injuries. It is a fact that his leg had to be amputated and two independent witnesses have supported his version so far as the attack on his leg is concerned. Therefore, in our opinion, PW-1 Parvatrao Nimbalkar, to the extent to which he speaks about the assault by accused 1 on his leg is concerned, must be believed.

21. In **Sucha Singh and another v. State of Punjab, (2003) 7 SCC 643**, the Supreme Court has considered a situation where testimony of a witness was partly deficient, but the residue was sufficient to prove the guilt of the accused. The following observations of the Supreme Court are material:

> "The maxim "falsus in uno falsus in ommibus" has no application in India and

the witnesses cannot be branded as liars. This maxim has not received general acceptance nor has it come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". The doctrine is a dangerous one, especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a deep stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as

> well. The evidence has to be sifted with care. Firstly of a particular material witness or a material particular would not ruin it from the beginning to end. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment".

In our opinion, the above observations of the Supreme Court would cover the present case. The exaggerated version given by this witness can be separated from the core of his evidence which is supported by the evidence of two eye-witnesses and conviction can be based on it. The offence is serious. It is committed in the court premises, on a working day, in the afternoon. The evidence indicates that several litigants, lawyers and other staff members were present. Such an incident is bound to unleash a wave of terror. In the circumstances, considering the evidence on record, we feel that the appeal filed by accused 1 must be dismissed.

22. So far as the prosecution case about the conspiracy is concerned, the same has rightly been discarded by the trial court. We feel that the evidence of discovery has also been rightly discarded. There is absolutely no

evidence on record to come to the conclusion that accused 2 to 6 are in any way involved in this crime. They have been rightly acquitted by the trial court and the view taken by the trial court so far as accused 2 to 6 are concerned is, in fact, the only view which can be taken as regards their alleged participation in the crime. Hence, we are not inclined to disturb their order of acquittal. So far as acquittal of accused 1 under section 307 of the IPC is concerned, we are not inclined to disturb that in view of the doctor's evidence that injuries 1 and 2 could be fatal in case of excess bleeding.

23. So far as the revision application filed by the complainant being Criminal Revision Application No.455 of 1988 is concerned, in the view that we have taken, it does not survive and will have to be dismissed. Hence, we pass the following order.

O R D E R

Criminal Appeal No.862 of 1988 is dismissed. The impugned order dated 14/9/1988 passed by the learned Session Judge in Sessions Case No.291 of 1987 is upheld. Order of conviction and sentence passed against original accused 1 Baban Shekha Bidgar is confirmed. In view of the

above, Criminal Appeal No.1073 of 1998 filed by the State is dismissed. Original accused 1 Baban Shekha Bidgar is on bail. His bail bond stands cancelled. He shall surrender within eight weeks from today. Interim order dated 7/10/1988 suspending fine is vacated.

Criminal Revision Application No.455 of 1988 is also dismissed.

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)